

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

PACIFIC INDEMNITY COMPANY,

Plaintiff,

V.

ALFRED KEMP, Individually and d/b/a  
KEMP PLUMBING

and

MARTIN SANDBORG, Individually and d/b/a  
SANDBORG PLUMBING AND HEATING,

Defendants.

: CIVIL ACTION NO.

: 04-11975(RWZ)

$$\vdots$$

**: AFFIDAVIT OF**

: DANIEL Q. HARRINGTON IN

**: OPPOSITION TO DEFENDANT**

## : KEMP'S MOTION IN LIMINE

**: TO PRECLUDE TESTIMONY**

**: FROM PLAINTIFF'S EXPERT**

**: THOMAS KLEM AS TO LOCATION**

: OF COLD WATER VALVE BEING

**: UNDER TARP UNDER KITCHEN**

**: SINK POST-FIRE DUE TO**

## : SPOILIATION OF EVIDENCE

:

Daniel Q. Harrington, being first duly sworn, states as follows:

1. I am an attorney duly admitted to practice law in Pennsylvania, New Jersey, New York and Minnesota, and in numerous federal courts, and have been admitted to appear *pro hac vice* for the plaintiff in this matter.

2. Attached are copies of photographs taken by Mr. Klem showing that the cold water valve assembly from beneath the kitchen sink of the carriage house was not in place on the piping at the time of his original inspection. These photographs are marked as Plaintiff's Trial Exhibits 2Z and 2AA through 2EE. Defendants have stipulated to the admissibility of Exhibits 2Z and 2AA through 2CC, but not 2DD and 2EE.

3. Mr. Klem will testify that Stipulated Exhibit 2Z shows the cold water assembly in its “as found” location.

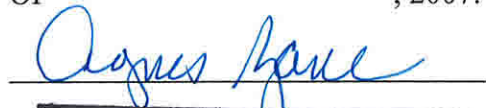
4. As noted in his report, Mr. Klem made the photographs showing that the cold water valve was not in place available to defendants' investigators and liability adjusters prior to the first of defendants' multiple inspections of the premises.

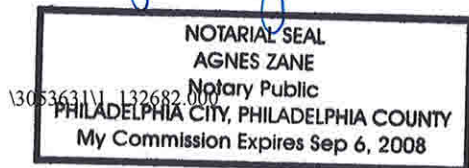
5. This Affidavit is being submitted in Opposition to Defendant Kemp's "Motion In Limine To Preclude Testimony Of Thomas Klem As To Location Of Cold Water Valve Being Under Tarp Under Kitchen Sink Post-Fire Due To Spoliation Of Evidence."

  
DANIEL Q. HARRINGTON

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 23 DAY  
OF MARCH, 2007.









MAA-1-14A







tabbles  
**PLAINTIFF'S  
EXHIBIT**  
2A1

MR 1-75A





MRP-72A





K0503-10







K058-16





K050  
15

tabbler  
**PLAINTIFF'S  
EXHIBIT**  
288